

1 STATE OF OKLAHOMA

2 2nd Session of the 57th Legislature (2020)

3 SENATE BILL 1526

By: Bergstrom

4
5
6 AS INTRODUCED

7 An Act relating to the Combined Pesticide Law;
8 amending 2 O.S. 2011, Section 3-82, as amended by
9 Section 1, Chapter 239, O.S.L. 2017 (2 O.S. Supp.
10 2019, Section 3-82), which relates to licensing
11 requirements; requiring minimum liability insurance
12 against property damage for certain commercial
13 applicators; and providing an effective date.

14 BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

15 SECTION 1. AMENDATORY 2 O.S. 2011, Section 3-82, as
16 amended by Section 1, Chapter 239, O.S.L. 2017 (2 O.S. Supp. 2019,
17 Section 3-82), is amended to read as follows:

18 Section 3-82. A. LICENSE REQUIRED - 1. It shall be unlawful
19 for any person to act, operate, or do business or advertise as a
20 commercial, noncommercial, certified applicator, temporary certified
21 applicator, service technician, or private applicator unless the
22 person has obtained a valid applicator's license issued by the State
23 Board of Agriculture for the category of pesticide application in
24 which the person is engaged.

1 2. A license may be issued by the Board in any category of
2 pesticide application if the applicant qualifies and the applicant
3 is limited to the category of pesticide application named on the
4 license. The Board may establish categories of pesticide
5 application as necessary. Licenses shall be issued upon application
6 to the Board on a form prescribed by the Board. The application
7 shall contain information regarding the applicant's qualifications,
8 proposed operations, and other information as specified by the
9 Board.

10 3. a. An aerial license shall not be issued or be valid
11 unless the applicant files with the Board a copy of a
12 valid document issued by the Federal Aviation
13 Administration showing that the person is qualified to
14 operate or supervise the operation of an aircraft
15 conducting agricultural operations. Applicants for an
16 aerial license and pilots working under a license may
17 be subject to a complete and thorough background
18 examination.

19 b. The Board shall promulgate rules regarding aerial
20 applicators and applications consistent with federal
21 law and shall solicit the assistance of the Federal
22 Aviation Agency in the enforcement of this subsection.

23 4. Each business location shall require a separate license and
24 separate certified applicator except that a certified applicator for
25

1 a noncommercial business location may also serve as the certified
2 applicator for one commercial business location.

3 5. A license shall not be issued for the category of pesticide
4 application of any applicant or representative who has a temporary
5 certification.

6 B. CERTIFICATION REQUIRED - 1. A license shall be issued only
7 after satisfactory completion of the certification standards by the
8 person who shall be the certified applicator under the license.
9 Temporary certified applicators do not qualify as the certified
10 applicator for a license, nor may they act as a certified
11 applicator. The Board shall deny the application for certification,
12 recertification, issuance, or renewal of a certificate or license
13 for a failure to show proper qualification under the rules or for
14 violations of any provisions of this section. A certificate in any
15 category shall be valid for five (5) years unless suspended,
16 canceled, or revoked by the Board or until recertification is
17 required for the category, and may be renewed after successful
18 completion of recertification requirements. The Board may require
19 certified applicators to be recertified once in a five-year period.

20 2. A certified service technician identification shall be
21 issued upon application and completion of certification standards
22 determined by the Board. Temporary certified applicators may
23 qualify as a certified service technician. No person shall act, do
24 business as, or advertise as a service technician unless the person

1 has met all the qualifications and standards as required by the
2 Board. The service technicians' identification shall be issued in
3 the name of the licensed entity. The licensee shall ensure that the
4 service technician identification is returned to the Board upon
5 termination of the employee. A service technician identification
6 shall be valid for a period of five (5) years unless suspended,
7 canceled, or revoked by the Board, until recertification is required
8 by the Board, or until the service technician leaves the employ of
9 the licensed entity. The Oklahoma Department of Agriculture, Food,
10 and Forestry may issue a service technician identification upon
11 completion of the following:

- 12 a. a determination is made by the Department that the
13 applicant has successfully completed the written
14 examination,
- 15 b. the licensed entity provides a completed service
16 technician identification application form at the time
17 of testing, and
- 18 c. all appropriate fees are paid at the time of testing.

19 3. Each license, except for private applicators, shall expire
20 on the 31st day of December following issuance or renewal, and may
21 be renewed for the ensuing calendar year, without penalty or
22 reexamination, if a properly completed application is filed with the
23 Board not later than the 1st day of January of each year. If
24 application is not received by January 1, a penalty of twice the

1 amount of the renewal fee shall be charged for renewal of the
2 license. If the application is not received by February 1, an
3 additional one-hundred-dollar penalty shall be paid prior to license
4 renewal.

5 All private applicator licenses are in effect for five (5) years
6 and may be renewed by application after completion of a continuing
7 education program or written exam approved by the Board.

8 C. The following fees shall be paid to the Board:

9 1. A fee of One Hundred Dollars (\$100.00) for each category of
10 pesticide application shall be paid to the Board for the issuance or
11 renewal of a commercial applicator business license. Not more than
12 Five Hundred Dollars (\$500.00) total category fees shall be charged
13 annually to any business location of an applicator;

14 2. A fee of Fifty Dollars (\$50.00) shall be paid to the Board
15 for each written examination conducted by the Board;

16 3. A fee of Fifty Dollars (\$50.00) shall be paid to the Board
17 for each practical examination conducted by the Board;

18 4. A fee of Twenty Dollars (\$20.00) shall be paid to the Board
19 for the issuance or renewal of a private applicator's license;

20 5. A fee of Fifty Dollars (\$50.00) shall be paid to the Board
21 for the issuance or renewal of a noncommercial business license.

22 Not more than Two Hundred Fifty Dollars (\$250.00) total category
23 fees shall be charged annually to any noncommercial business
24 location of an applicator;

1 6. A fee of Twenty Dollars (\$20.00) shall be paid to the Board
2 for the issuance or renewal of service technician identification;

3 7. A fee of Ten Dollars (\$10.00) shall be paid to the Board for
4 the issuance of duplicate licenses or certificates or transfer of
5 service technician identification;

6 8. A fee of Fifty Dollars (\$50.00) shall be paid to the Board
7 for each recertification procedure; and

8 9. A fee of One Hundred Dollars (\$100.00) shall be paid to the
9 Board for each reciprocal certification procedure for applicator
10 certifications.

11 D. All fees shall be deposited in the State Department of
12 Agriculture Revolving Fund.

13 E. Fees shall be paid to the Board prior to the processing of
14 any application.

15 F. Failure to pay any fee identified with licenses, permits,
16 pesticide registrations, or certification shall require the Board to
17 deny the application.

18 G. INSURANCE REQUIRED - 1. The Board shall not issue a
19 commercial applicator's license until the applicant has furnished
20 evidence of an insurance policy or certificate by an insurer or
21 broker authorized to do business in this state insuring the
22 commercial applicator and any agents against liability resulting
23 from the operations of the commercial applicator. The insurance
24

1 shall not be applied to damage or injury to agricultural crops,
2 plants, or land being worked upon by the commercial applicator.

3 2. The amount of liability shall not be less than that set by
4 the Board for each property damage arising out of actual use of any
5 pesticide. For commercial applicators licensed in the Agricultural
6 Plant Category, Agricultural Animal Category and Forest Pest Control
7 Category, as provided in 35:30-17-10 of the Oklahoma Administrative
8 Code, and aerial pesticide applicators, liability insurance coverage
9 for property damage shall be no less than Five Million Dollars
10 (\$5,000,000.00). The liability shall be maintained at not less than
11 that sum at all times during the licensing period. The Board shall
12 be notified fifteen (15) days prior to any reduction in liability.

13 3. If the furnished liability becomes unsatisfactory, the
14 applicant shall immediately execute new liability upon notice from
15 the Board. If new liability is not immediately obtained, the Board
16 shall, upon notice, cancel the license. It shall be unlawful for
17 the person to engage in the business of applying pesticides until
18 the liability is brought into compliance and the license reinstated.

19 H. DAMAGES - 1. Prior to filing an action against an
20 applicator for damages to growing crops or plants, any person
21 alleging damages to growing crops or plants shall:

- 22 a. within ninety (90) calendar days of the date that the
23 alleged damages occurred or prior to the time that
24 twenty-five percent (25%) of the allegedly damaged

1 crops or plants are harvested, whichever occurs first,
2 file a written complaint statement with the Department
3 regarding the alleged damages, and

4 b. between the date of filing of the written complaint
5 pursuant to subparagraph a of this paragraph and the
6 date harvesting or destruction of the allegedly
7 damaged crops or plants occurs, allow the applicator
8 and the representatives of the applicator reasonable
9 access to the property to inspect and take samples of
10 the allegedly damaged crops or plants during
11 reasonable hours. The representatives of the
12 applicator may include, but not be limited to, crop
13 consultants, bondsmen, and insurers. Nothing in this
14 subparagraph shall limit in any way the harvesting or
15 destruction of the allegedly damaged crops or plants
16 in the ordinary course of business and practice.

17 2. Any person failing to comply with paragraph 1 of this
18 subsection shall be barred from filing an action for damages against
19 the applicator.

20 I. PERMIT REQUIRED - 1. It shall be unlawful for any person to
21 sell, offer for sale, or distribute within this state any restricted
22 use pesticide without first obtaining a restricted use pesticide
23 dealer's permit issued by the Board.

1 2. A permit may be issued by the Board in any category of
2 pesticide sales if the applicant qualifies under the provisions of
3 this section and the applicant is limited to the category of
4 pesticide sales named on the permit. The Board may establish
5 categories of pesticide sales as necessary.

6 3. The permit shall be issued only upon application on a form
7 prescribed by the Board and the application shall contain
8 information regarding the applicant's proposed operation and other
9 information as specified by the Board.

10 4. Each business location engaged in the sale or distribution
11 of restricted use pesticides shall require a separate permit.

12 5. The annual permit fee for a restricted use pesticide dealer
13 permit shall be Fifty Dollars (\$50.00) for each location.

14 6. The Board may require a certified applicator to be present
15 at any location where designated restricted use pesticide sales
16 occur.

17 J. PESTICIDE REGISTRATION REQUIRED - 1. Every pesticide or
18 device distributed, sold, or offered for sale within this state or
19 delivered for transportation or transported in intrastate or
20 interstate commerce shall be registered with the Board.

21 2. The registrant shall file with the Board a statement
22 including, but not limited to:
23
24
25

- 1 a. the name and address of the registrant and the name
2 and address of the person whose name shall appear on
3 the label, if other than the registrant,
4 b. the name of the pesticide or device,
5 c. a complete copy of the labeling accompanying the
6 pesticide or device and a statement of all claims to
7 be made for it, and directions for use, and
8 d. if requested by the Board, a full description of the
9 tests made and the results upon which the claims are
10 based. In renewing a registration, a statement shall
11 be required only with respect to information which is
12 different from the information furnished when the
13 pesticide or device was last registered.

14 3. Each registrant shall pay to the Board an annual
15 registration fee of Two Hundred Ten Dollars (\$210.00) for each
16 pesticide or device label registered. These fees shall be used by
17 the Oklahoma Department of Agriculture, Food, and Forestry for
18 purposes of administering pesticide management programs. A portion
19 of these fees, in the amount of Three Hundred Thousand Dollars
20 (\$300,000.00) annually, shall be dedicated for conducting programs
21 for unwanted pesticide disposal. This amount shall be deposited
22 into the State Department of Agriculture Unwanted Pesticide Disposal
23 Fund and shall be dedicated for this use only.
24

1 4. The Board may require the submission of the complete formula
2 of any pesticide. Trade secrets and formulations submitted by the
3 registrant may be kept confidential. If it appears to the Board
4 that the composition of the pesticide is adequate to warrant the
5 proposed claims and if the pesticide, its labeling, and other
6 material required to be submitted comply with the requirements of
7 this section, then the pesticide shall be registered.

8 5. If it does not appear to the Board that the pesticide or
9 device is adequate to warrant the proposed claims for it or if the
10 pesticide or device, its labeling, and other material required to be
11 submitted do not comply with the provisions of this section, it
12 shall notify the applicant of the deficiencies in the pesticide,
13 device, labeling, or other material required and afford the
14 applicant an opportunity to make the necessary corrections. If the
15 applicant claims, in writing, that the corrections are not necessary
16 and requests in writing a hearing regarding the registration of the
17 pesticide or device, the Board shall provide an opportunity for a
18 hearing before refusing to issue the registration. In order to
19 protect the public, the Board may at any time cancel the
20 registration of a product or device. In no event, shall
21 registration of a pesticide or device be considered as a defense or
22 excuse for the commission of any offense prohibited under this
23 section.

1 6. The Board may require that pesticides be distinctively
2 colored or discolored to protect the public health.

3 7. Registration shall not be required in the case of a
4 pesticide shipped from one plant or place within this state to
5 another plant or place within this state that is operated by the
6 same person.

7 K. CATEGORIES OF LICENSES AND PERMITS - The Board may establish
8 any category of license for pesticide application or any category of
9 permit for pesticide sales.

10 L. PERMIT AND PESTICIDE REGISTRATION EXPIRATION - 1. All
11 permits for pesticide sales shall be issued for a period of one (1)
12 year and the permits shall be renewed annually and shall expire on a
13 date determined by the Board. A permit may be renewed for the
14 ensuing year, without penalty, if a properly completed application
15 is filed with the Board not later than the fifteenth day of the
16 month first following the date of expiration. If the application is
17 not received by that date, a penalty of twice the amount of the
18 renewal fee shall be charged for renewal of the permit.

19 2. All pesticide registrations shall be issued for a period of
20 one (1) year. The registration shall be renewed annually and shall
21 expire on a date to be determined by the Board. Pesticide
22 registrations may be renewed for the ensuing year, without penalty,
23 if a properly completed application is filed with the Board not
24 later than the fifteenth day of the month first following the date

1 of expiration. If the application is not received by that date, a
2 penalty of twice the amount of the renewal fee shall be charged for
3 renewal of the pesticide registration.

4 M. PESTICIDE PRODUCING ESTABLISHMENTS - 1. Definitions as used
5 in this subsection:

6 a. "establishment" means any site where a pesticide
7 product, active ingredient or device is produced
8 within the state,

9 b. "produce" means to manufacture, prepare, propagate,
10 compound or process any pesticide or to package,
11 repackage, label, relabel or otherwise change the
12 container of any pesticide or device, and

13 c. "producer" means any person who produces,
14 manufactures, prepares, compounds, propagates or
15 processes any active ingredient, pesticide, or device
16 as used in producing a pesticide.

17 2. It shall be unlawful for any person to produce within this
18 state any pesticide, active ingredient or device without first
19 obtaining a pesticide producer establishment permit issued by the
20 Board.

21 3. The permit shall be issued only upon application on a form
22 prescribed by the Board. The application shall contain information
23 regarding the proposed operation of the applicant and other
24 information as specified by the Board. If at any time there is a
25

1 change of the information provided in or on the application for a
2 pesticide producer establishment permit, the producer must notify
3 the Board in writing within thirty (30) calendar days of the change.

4 4. The producer shall file a statement with the Board including
5 but not limited to:

- 6 a. the name and address of the company,
- 7 b. the name and address of the establishment as well as
8 the physical location, if different than the mailing
9 address,
- 10 c. the name of any pesticide, active ingredient, or
11 device, and
- 12 d. the name and address and other pertinent contact
13 information for the responsible party.

14 5. All permits for pesticide producer establishments shall be
15 issued for a period of one (1) year and shall be renewed annually.
16 All permits shall expire on June 30 each year and may be renewed
17 without penalty if a properly completed application is filed with
18 the Board not later than the fifteenth day of the month first
19 following the date of expiration. If the application is not
20 received by that date, a penalty of twice the amount of the renewal
21 fee shall be charged for renewal of the permit.

22 6. Each pesticide producer establishment location engaged in
23 the production of pesticides, active ingredients or devices shall
24 require a separate permit.

1 7. The annual permit fee for a pesticide producer establishment
2 shall be One Hundred Dollars (\$100.00) for each location.

3 8. If requested by the Board, a complete copy of all labeling,
4 Material Safety Data Sheets, technical information associated with
5 the pesticide, active ingredient, or device and a statement of all
6 claims to be made as well as directions and use must be submitted to
7 the Board.

8 9. In order to determine compliance with state and federal
9 laws, the Board may request a full disclosure of inventory records,
10 sales and distribution records, and any other information deemed
11 necessary by the Board.

12 10. Every producer shall keep accurate records pertaining to
13 pesticide, active ingredient, or device production and distribution
14 as required by the Board. The records of the producer shall be kept
15 intact at the principal producing location in this state for at
16 least two (2) years after the date of production and distribution
17 and copies shall be furnished to any authorized agent of the Board,
18 immediately upon request in person, at any time during the regular
19 business hours of the producer. Copies of records shall be
20 furnished to any authorized agent of the Board within seven (7)
21 working days of a written request, in summary form, by mail, fax, e-
22 mail, website, or any other electronic media customarily used.

23 N. COMPLAINT RESOLUTION - Upon receipt of a written complaint,
24 the Board shall notify the person filing the complaint in writing of
25

1 its receipt and status within two (2) working days. The person whom
2 the complaint is filed against shall also be notified within two (2)
3 working days. Notification that a complaint has been filed may also
4 be given to the landowner or operator when appropriate. The
5 resolution of a complaint is the completion of the appropriate
6 administrative, jurisdictional, or legal remedies to the extent
7 possible by the Department. The complainant shall be notified in
8 writing within seven (7) working days after resolution of the
9 complaint.

10 SECTION 2. This act shall become effective November 1, 2020.

11
12 57-2-3238 QD 1/15/2020 11:32:38 PM
13
14
15
16
17
18
19
20
21
22
23
24
25